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SCOTTISH DEVOLUTION: IDENTITY AND IMPACT AND THE CASE OF COMMUNITY CARE FOR THE ELDERLY

GORDON MARNOCH

This article examines the emergent identity and impact of devolution in Scotland. Using the case of community care for the elderly, a model is set out for capturing the different interpretive perspectives evident in relation to a particular policy area in 1999–2001. The political story of the ‘free personal care’ issue, in which the Scottish Executive were unexpectedly forced into adopting a markedly different policy from the rest of the UK, is examined in some detail. Setting the episode in a broader context, four discursive thematics are identified in relation to the policy case. A model is demonstrated for examining different aspects of devolution including constitutional level and sub-system aspects of post-devolution governance. Conclusions are drawn as to the meaning which should be ascribed to the discourse associated with devolution and community care for the elderly.

INTRODUCTION

This article sets out a scheme for comprehending the emergent identity and impact of Scottish devolution. The legislative work of the Labour Government in its first year of office produced arguably the greatest constitutional upheaval since the Great Reform Act in 1832. While it is tempting to discuss devolution in the constitutional language in which the settlement was conceived, actual policy processes observed are seen to be every bit as dependent on an understanding of the language of low politics used in the sub-systems of government. The ‘high politics’ of the devolution settlement created institutions and an associated set of political relationships but not an all-embracing identity. In the case under scrutiny – post-devolution community care for the elderly – a long list of actors are involved in both government and the numerous policy sub-systems such as those dominated by local government or the professions. Connecting with these actors are a multitude of ideas, issues, interests and points of political engagement informing the discourses advanced in relation to community care for the elderly. Put simply, devolution means different things to different people, implying a clear need to examine devolution ‘in the round’ (Leicester and Mackay 1998). Identity is not yet formed, experiences varied and impact assessments therefore contestable. Foundationalist measurement of ‘facts’ is unwarranted (Bevir and Rhodes 1998; McSwite 1997). The identity proper of

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devolution is likely to be best revealed in research, which acknowledges both high and low politics, interfaces between the two, and pays due heed to the importance of perceptions in experiences of devolution.

A framework is sought for:

1. understanding what devolution is – the problem of identity;
2. understanding ways in which devolution makes a difference – the problem of impact.

The accumulated record of policy case discourses advanced by associated policy ‘players’, it is argued, will create a sense of identity. The problem of establishing impact on a terrain of contested perceptions may also be resolvable through the collection of context-specific perceptions of what constitutes impact. The intention is therefore to develop a basic framework for observing unfolding discourses associated with the policy case chosen – community care for the elderly.

WHY POLICY CASE STUDIES ARE NEEDED

The political institution-creating basis of the devolution settlement has to some extent encouraged what Kooiman (1993, p. 35) describes as a ‘unilateral’ view of governance in which government and society are treated as different and separate entities. This will not do if identity and impact are to be understood. In the case in question it is clear that the governance of health and community care involves an institutionally based political process with associated hierarchies and rule making but is also reliant on articulation with a diverse range of public and private interest groups. In this respect the constitutional settlement is but one further factor in the policy arena. To apply Kooiman’s terminology, sub-systems of governance such as that associated with health and community care, involve ‘complexity, dynamics and diversity’.

The institutional, economic and social structures associated with devolution in Scotland are less stable than those dealt with in a UK context. The inclination to reformulate old research questions around new problems must be resisted (Sibeon 2000). The problems facing the researcher in this specific case are also heightened by the high degree of contestability that surrounds community care. The complex funding patterns, fuzzy implementation systems and indeterminate outcomes that characterize the sector, create a contextual smoke screen that obscures the emergent identity and impact of devolution. Case studies allow the chaos of interaction to form the basis of the study, where less naturalistic methodological schemes often provide a means of excluding chaos. An anti-foundationalist policy case study permits us to understand particularity and complexity (Stake 1995, p. 15). Devolution is a field which to a certain extent can be expected to demand new concepts and new techniques for evaluation and the way we handle research.

Case studies should not be confused with descriptive narrative. While narrative emphasizes time and sequence, which forms part of the policy

record, it will typically fail to capture the underlying basis of policy development. Case studies are particularly useful in dealing with non-linear events and indeterminate outcomes of the type encountered in community care policy. In practical terms the case study is as near as the researcher can normally get to the aspiration of treating the problem in a holistic fashion. While the focus is on the relatively narrow area of community care for the elderly, with attendant problems of generalization, the benefits of viewing devolution through the lens of a policy area case study are considerable, particularly in circumstances where little detailed work on the experience of devolution has been carried out. The case study provides a starting point in building a balanced research agenda that can be expected to illuminate the big issues surrounding identity and impact. The community care case in question can be considered as of both intrinsic and method-instructional interest.

WHY COMMUNITY CARE FOR THE ELDERLY SHOULD BE EXAMINED: SOME CONTEXTUAL ISSUES

A provisional review of likely case study material associated with community care for elderly reveals a complicated sequence of events, processes and outcomes. At 36 per cent of the Scottish Executive's expenditure total, the combined health and community care spend commands more fiscal weight than any other policy area under the control of the Scottish Parliament. Arguably, health and community care also presents the most complex set of political problems within the field of devolved competence. While post-devolution health and community care politics exhibit a certain continuity with the past, attempts to resolve problems are expected to show signs of major divergence from policies followed in England (Scottish Executive 2000a; Constitution Unit 2001, p. 5). Government and administration has never followed a uniform pattern across the UK (Levy 1995; McConnell 2000). Path dependency tendencies as described by Wilsford (1994) are less in evidence than might be anticipated when viewed from a Scottish or Northern Irish perspective. Health and community care services have historically been organized differently in England, Scotland and Northern Ireland (Hunter and Wistow 1988). For example combined organizational units have run health and social services in Northern Ireland since the early 1970s, predating the current efforts in Scotland and England to 'join-up government'. Likewise, health and local government structural reforms which took place in England during the 1980s and 1990s were not uniformly replicated in Scotland, hence the different structural basis for NHS administration operating in Scotland and England. In the 1980s, while the NHS in England was administered through regional and district management tiers, Scotland made do with single-tier boards. Devolution would seem to provide further freedom for divergence with the administration of primary care services, now markedly different in Scotland and England.

In the broader context, it is clear that a legitimacy problem with the management of the NHS has been slowly emerging over the past 15 years (Harrison *et al.* 1997; Mulligan 1998; Morgan 1998; Harrison and Dixon 2000; Marnoch *et al.* 2000). All of these factors make community care for the elderly a rich source of identity-building discourse material. More specifically, the parliamentary episode contained in the policy case is thought to be significant in the devolution experience. Bogdanor (1999, p. 19), reviewing Labour's devolutionary schemes from a constitutionalist perspective, identifies tensions produced by the conflicting principles of sovereignty or supremacy of parliament and the grant of self-government to Scotland, Wales and Northern Ireland. A cluster of related issues emerge out of this central problem (Brown 2000). It is possible to interpret the events of January 2001 – precipitating the first major public conflict between the Labour Government in Westminster and the Scottish Executive in Edinburgh, over the funding of personal care for the elderly – using precisely those familiar constitutional terms of reference. (A less publicized dispute had taken place over fisheries policy.)

The issue of long-term care for the elderly was the subject of a Royal Commission, under the chairmanship of Sir Stewart Sutherland, which reported in mid-1998 (Royal Commission on Long Term Care of the Elderly 1998). The inquiry examined the key factors involved in providing for the care needs of elderly people in community settings. The report reflects an established discourse over issues such as individual rights, the nature of rising demand for places in nursing and residential home settings, the rise of the independent care sector, payment rules for places, financial responsibilities of individuals and local authorities, acute-community care resource politics in the NHS and quality of community care provision. Long-standing controversies over the transfer of resources from NHS to social services budgets and the alleged existence of a 'grey time-bomb' were also subjected to a formal analysis. In answering popular concerns, recommendations were made on the issue of the 'means-test' applied by local authorities in assessing the financial contribution that an individual should make towards the fees payable for care in residential or nursing home settings. Seeking to 'clear the decks' in economic, moral and organizational terms, the Sutherland Committee recommended that the costs for caring for older people be split between living costs, housing costs and personal care, with the provision of free at point of use personal care in all settings, paid for out of general taxation. As time went on it became obvious that the fiscally cautious Westminster government would not accept the economic analysis underpinning the Sutherland report, particularly that part which would extend the exposure of the public purse to claims for free at point of use access to services by older people. Given that the Westminster government was slow to respond conclusively to the Sutherland report, a distinctive Scottish response to Sutherland became more likely. A policy vacuum had been inadvertently created.

Deputy Health Minister Iain Gray had set out the Executive's position on community care in a debate of 18 May 2000 (Scottish Parliament 2000a). His 'report on progress' noted the background of rising caseloads and service user expectations. Reference was also made to a strategy for carers, the establishment of a social services council to increase professionalism in the work force, the creation of a Scottish Commission for the Regulation of Care and a review of services for people with learning difficulties. The work of an 'in-house' inquiry into community care chaired by the Deputy Minister – the 'Joint Futures Group' (Scottish Executive 2000b) – further indicated an awareness of the need to be seen to be engaging in some detail with the Sutherland agenda.

The Labour Government in London announced its rejection of Sutherland's recommendations on free personal care at the end of July 2000. It did so as part of a major health services policy re-launch (Department of Health 2000). New rules would make nursing care free, but require the elderly to pay for personal care, subject to a means test. By this point the debates in the Scottish Parliament and the various announcements made by the Executive had raised the discursive profile of community care policy (*Press and Journal* 2000a). The Scottish Parliament's Health and Community Care Committee had also become a vehicle for promoting discussion. An inquiry into 'issues arising' had been established in October 1999. The inquiry was structured around resource transfer issues, co-ordination of services between health boards and local authorities, particular examples of best practice and the best means of delivering the most appropriate care to patients. The Health and Community Care Committee had therefore the potential to become a focal point for the policy community and wider network in Scotland. Over a period of 9 months, most if not all community care stakeholders submitted evidence to the inquiry or appeared before the Committee to answer questions. The Committee's report was published in November 2000 (Scottish Parliament 2000b) as the pressure mounted on the Executive to make its position known on the implementation of Sutherland and the issue of free personal care in particular.

This latter issue presented the Labour-led Executive with difficulties on various levels. Free at point of use personal care could credibly be portrayed as a choice between cradle-to-grave universalism and means-tested selectivity. Alternatively, free personal care for all could be taken to imply another New Labour retreat on socialist income re-distribution. Higher public expenditure and presumably the prospect of higher Scottish taxation were generally seen by the leadership in a negative light. The Liberal Democrat coalition partners were far more comfortable with the ideological and public expenditure implications of free personal care, but at this point had yet to test the terms on which they worked in coalition with Labour. While the Conservative opposition in Scotland might have been inclined to identify publicly funded free at point of use personal care with higher taxation, they also wished to exploit divisions in the Labour Party and appear to have been

given free reign to do so by Central Office in London (*Press and Journal* 2000b). Only the Scottish Nationalist Party (SNP) enjoyed an unencumbered opportunity to advocate free personal care, which they did with some consistency of purpose. The policy network of institutions and professionals associated with care for the elderly were thought to be in favour of free personal care. Some interpretive caution is needed here however. Professionals involved in service delivery would be well aware of the administrative costs and time delays associated with means-testing, arguably a more important issue than the marginal cost of extending provision of free personal care. Public opinion was thought to be divided and somewhat confused over definitions of personal care and related community care cost-pay issues, a view later confirmed by survey research conducted on behalf of the Executive (Dewar *et al.* 2001; Jones *et al.* 2001).

Throughout the late autumn and Christmas period of 2000 the signals on the likelihood of providing free personal care in Scotland were becoming more negative. The SNP, as the main opposition party, were delighted at having found an issue on which to open up a divide between Edinburgh and Westminster and were increasingly aggressive in attacking the Executive's 'progressive pragmatism' which it sought to portray as the inevitable result of a flawed constitutional settlement (*Press and Journal* 2000c). Traditional nationalist tactics of confrontational assertiveness, challenges to the central authority of the 'containing' UK state and the questioning of legitimacy, could all employed in the community care case. The nationalist cause is seemingly best served by identifying Westminster with a policy of cuts in Scottish spending. 'Full fiscal freedom' (F3 in SNP-speak) is the campaign slogan, but this is a difficult political field for the nationalists. Their case would be far more conveniently served by some evidence that Scotland, like Catalonia and the Basque country, was historically deprived of public spending (Guibernau and Montserrat 1996, p. 49). What is clear is that the SNP, while prepared to present the issue of free personal care for the elderly in a nationalist context, were unable to claim it as their own. A wider segment of Scottish society were seen to join a discursive action on the issue of community care and the significance of the issue for devolution was not lost on the Scottish media covering the issue. For example the chair of the Grampian Senior Citizens' Forum was given the opportunity to indicate to the media that he believed the issue was a test of the 'fledgling Scottish Parliament's sovereignty' (*Press and Journal* 2001a). Public interest grew, particularly after the Health and Community Care Committee had in October forced the Executive to go public on the cost of providing free personal care, then estimated at a figure of £110 million per annum.

Matters came to a head in January 2001. Both the Labour Executive and the Scottish media appear to have been caught off guard when it became clear that the Liberal Democrats sitting in Parliament were prepared to vote with the SNP on a motion committing the executive to full implementation of Sutherland's proposals on personal care. When joined by the Conservatives,

this produced a decisive coalition against any Executive decision to follow the Westminster lead on means-testing personal care entitlement. By the final weekend in January the First Minister was forced into a position of having to defy both Labour in Westminster and apparently a majority of his own Cabinet on the free personal care question. In the absence of any deals with the Liberal Democrats, the imminent defeat suggested by simple parliamentary voting arithmetic, led to an announcement being made to bring forward proposals to fund free personal care (*Press and Journal* 2001b). In Westminster, the Scottish Office Minister Helen Liddell insisted that issues such as personal care were matters for the Scottish Parliament but speculation was rife on how Labour in London would deal with an errant First Minister unable to deliver support in Scotland (*Press and Journal* 2001c). Even at this late stage the Executive appear to have been looking for ways to finesse a Westminster approvable compromise and as part of the back down statement, they announced the intention to set up a new advisory group on care for the elderly. It should be noted that the Care Development Group chaired by the Deputy Minister for Health and Community Care would be the fourth 'inquiry' into community care launched in Scotland after the publication of the Sutherland Report (The 'Joint Futures Group, the Chief Nursing Officer's Group (Scottish Executive 2000b), and the Parliament's Health and Community Care Committee all carried out inquiries in 2000). Finally, at the end of June 2001 an unequivocal commitment was made to fund free personal care in the form of the budget statement made by the Executive. Intriguingly, the Executive's June announcement on its budgetary plans now costed free personal care at £200 m – a 90 per cent rise on the figure given to the Health and Community Care Committee in October 2000. The lack of financial clarity is of some significance. In fact the evidence presented in the Health and Community Care Committee's Report may point to a fundamental weakness in the system of governance in community care policy. While the total sum being spent on community care was thought to be inadequate, the problem was compounded by the lack of a systematic method for carrying out calculations on community care expenditure – a major finding of the Health and Community Care Committee Inquiry. The report also concluded that current financial and resource management regimes fail either to record, with any degree of certainty, the precise amount that is actually spent on community care in any location or provide the basis for calculating the amount that should be spent. In these circumstances of puzzlement, it went on to say, strategic planning and implementation are discouraged. Resource management was judged to be all too often characterized by 'fire fighting' and improvisation rather than properly worked out calculations on how resources can be used to maximize benefit. In the course of the 9-month inquiry the policy community had spoken at length on the problems of 'lack of fit' between local authority and NHS financial planning regimes, resource transfer disputes, charging inequalities and short-term funding and a tendency to invest in a multiplicity of short

term one-off projects, which in turn are not adequately evaluated. Financial planning systems in the NHS and local authorities were said to be constructed on different principles and serving distinctive purposes.

As a consequence of constant re-negotiation over the arrangements for resource transfer, financial and resource management takes place against a 'background' noise of disputed responsibilities. (Scottish Parliament 2000b para. 31)

The Care Development Group under the chairmanship of Malcolm Chisholm Deputy Minister for Health and Community Care, set up amidst the confusion of the Executive's defeat over free personal care, reported in September 2001 and addressed some of the issues discussed above. The *Fair Care for Older People* (Scottish Executive 2001) report, in spite of the circumstances in which the group was set up, deserves greater attention than might be expected. The status of the Care Development Group appears to have been high, with the substantive research and analysis presented in the report informing the legislation contained in the Community Care and Health (Scotland) Act 2002. The report represented the outcome of a 6-month inquiry into the implementation issues associated with long-term care for the elderly and in particular the delivery of the Executive's free personal care commitment. Several aspects of the exercise are worthy of further consideration. Firstly, the type of information produced by the Group both in terms of scope and detail is indicative of a need to supplement the analytic capacity of the civil service in Scotland in circumstances where new policies are being developed. Secondly, the Executive's unbounded enthusiasm for consultation appears to represent a risky proposition. The Group placed advertisements in the press inviting the public to submit their views, hired consultants to conduct a telephone survey of householders, ran focus groups and conducted meetings with the public across Scotland. The consultation process and results that are recorded in *Fair Care for Older People*, although extensive and laying claims to methodological rigour, present some awkward problems. As a consensus demonstrating exercise that was aimed at justifying a political decision taken by an uncertain Scottish Executive to a hostile government in London, it failed to deliver. The result was that the lack of clarity over universality versus selectivity in welfare provision in Scotland was only made more obvious. Confounding the views of the overwhelming majority of witnesses appearing before the Parliament's Health and Community Care Committee, only 34 per cent of those surveyed by telephone thought free personal care should be provided to everyone. A clear majority supported means testing (42 per cent) (Scottish Executive 2001, p. 87). Thirdly, the Executive, in accepting the report, further publicized the managerial complexities and indeed puzzlements that surround community care. It is unclear whether this was a deliberate act of transparency in government by a consensus-seeking Executive or the inadvertent signalling of an inability to act with competence and decisiveness in the policy area in question. Perhaps

the passing of the Community Care and Health (Scotland) Act 2002 moves the issue onto an implementation phase which provides an opportunity for the Executive to demonstrate a capacity to manage services as opposed to taking political decisions.

A DISCOURSE APPROACH?

While the political story retold in linear fashion above is in itself of interest, the community care for the elderly case can potentially reveal much more about devolution's identity and impact. As argued, devolution can be seen to lack a solid identity beyond that defined by the new institutions and directly associated practices established around the Scottish Parliament and Scottish Executive.

In these circumstances the 'discourse' or verbal reasoning, explanation and argument associated with policy cases are of considerable interest (Farmer 1996; Macdonnell 1986; Mills 1997, p. 6). It can be argued that it is the discursive actions of players in the policy process which in codifying the 'techniques and practices' of devolution's high and low politics provide identity (Harvey 1989, p. 45). Loosely adapting from social constructionist approaches to human identity, discourses which take place in relation to a specific policy case are treated here as constitutive (rather than reflective) of meaning. (Harré 1983, 1990; Potter 1996). That is, rather than deriving from a pre-defined 'reality', discourse is understood to enter directly into the basis of that reality and hence shape the nature and experience of devolution (Shi-xu 1997). Following this logic, identity and impact are emergent in the dynamics of a larger devolution discourse, which is in turn fed by case discourses such as the one under examination.

In establishing a model for examining devolution associated discourse, Fox and Miller's (1996, p.14) critique of 'loop democracy' orthodoxy in public administration, allows a line to be drawn between the following two tendencies.

Tendency (a)

Those who are prepared to judge devolution on the basis of correspondence to a policy process based on a classical administrative orthodoxy of elected representatives and neutral public officials acting for the people: who have expressed their will through the ballot box. Identity and impact are formed through discourse that takes place on the basis of concepts and rules, which corresponds to this orthodoxy.

Tendency (b)

Those who question both the normative basis of the orthodox loop model and the operational effectiveness of its individual component parts. By implication, this tendency associates devolution with no less than a re-invention of the democratic process of government.

Both tendencies (a) and (b) are fed by discourse which can be seen to arise in the context of policy cases. The model used below attempts to set out basic parameters for understanding the development of the community care for the elderly case discourse. Four narrative thematics were readily identifiable and these were subsequently used as a basis for exploring the developing contribution made by the case of community care for the elderly in the development of identity and impact. The four thematics were selected through a process involving:

- scrutiny of the written evidence submitted to the Scottish Parliament inquiry into community care;
- attendance and observation of 'evidence sessions' where witnesses were questioned by committee members;
- analysis of the Health and Community Care Committee Report on Community Care;
- scrutiny of media coverage of the community care for the elderly personal care 'episode' discussed above.

It should be stressed at this point that the narrative thematics established (see below) are not to be thought of as mutually exclusive discourses. Nor should they be confused with political 'camps' (party political or otherwise defined) in which an individual or group might consciously locate themselves. Rather, the thematics are interpretive perspectives. In addition, it should be stressed that it is not possible in the course of this current exercise to present a complete record or analysis of the community care for the elderly discourses associated with each thematic, the emphasis here is on model building. Having made these qualifications the four thematics chosen to understand the community care for the elderly discourse have been labelled as follows:

- New Scottish Institutionalism (NSI);
- Home Rule Communitarianism (HRC);
- Affirmative State Utilitarianism (ASU);
- Home Rule Pluralism (HRP).

NEW SCOTTISH INSTITUTIONALISM (NSI)

The tendency in this thematic is to talk around developments such as the electoral system for the Scottish Parliament, the conduct of Parliament's business and the working methods employed to maintain the Scottish Executive – Scotland Office axis. In broad terms a discursive route is discernible, based around key concepts of 'functionality', 'convention', 'accountability' and 'Europeanization of parliamentary organization'. NSI has been expressed in the particular policy case under examination, through discourse taking place over the ability of the Scottish Executive to raise taxes, spend money and pass acts, the relationship between the Scottish Executive and the leadership of the 'parent' Labour Party in London, 'backbench' assertion of

power of scrutiny over the executive and over the operation of coalition government (Constitution Unit 2000).

From the NSI perspective of equating devolution with the creation of a functioning institutional apparatus, the experience of the past two years has been rewarding in the sense of producing a great deal of discursive material (Parry and Jones 2000). A demonstration of the effective conduct of parliamentary and associated political business through the design of efficient and constitutionally sound government machinery is a key issue in NSI discourse. In the first parliamentary year the ability to progress business was established. A substantial legislative programme is now in train, demonstrating the functional capacity of the Executive and Parliament. In the case of community care there is the example of the Regulation of Care (Scotland) Bill, which moved successfully through the Parliamentary process. The Health and Community Care Committee could also be seen to be playing a role in modifying and endorsing legislation in this example. In the business of adding regulatory detail to legislation, well over 50 statutory instruments relating to health and community care have been processed by Parliament.

From an institution-building perspective it can be argued that comforting patterns are emerging in key areas such as ministerial roles and relationships, civil service–executive relations, the balance of the relationship between Executive and Parliament, party organization, cross party committees, committee business and the process of legislating (Norton 1995; Mackay 1999; Parry and Jones 2000). The NSI-based discourse is welcoming of statistics. Parliament met on 72 occasions from 12 May 1999 to 11 May 2000. MPs asked 84 000 parliamentary questions and put forward almost 1000 motions. The 16 Parliamentary Committees met from June 1999 onwards. The committee system, often promoted as an enhanced feature of the Scottish Parliament, produced 352 meetings; 117 committee reports were published, 15 bills were introduced and 173 pieces of subordinate legislation were considered. The cross-party Health and Community Care Committee met 28 times in 1999–2000. On 17 occasions the meetings were held entirely in public, on a further 10 occasions meetings were partly closed to the public, with 1 meeting held entirely in private – a reasonable score in terms of transparency (Scottish Parliament 2000c). Under Sir David Steel, the Scottish Parliamentary Corporate Body (Scottish Parliament 2000d) was able to report with some substantive evidence that business in the chamber had run smoothly.

The Scottish Parliament's committee system attracts special attention given that this was a key component in the 'not like Westminster' design instruction for the Parliament. The Health and Community Care Committee's following NSI instincts could therefore be tested against criteria such as:

- committee fit with 'parent' department on policy issues dealt with;
- committee agendas – scope and detail;
- effectiveness in taking evidence;
- expertise of committee membership;

- ability to sustain scrutiny of the executive;
- the position of the committees in the legislative sequence.

NSI contributors may therefore regard the record of committees as functionally acceptable. The actual impact of committees on the identity of devolution is perhaps less clear, exposing the limited terms upon which this particular discursive field is constructed.

While a strong sense of functionality informs the devolution discourse, at a certain level NSIs are also drawn to try and understand developments in areas of the devolution settlement where institutions were necessarily left on less solid foundations. Lord Sewel, one of Labour's devolution settlement managers, anticipated a convention being established that Westminster would not legislate on devolved Scottish matters without the consent of the Scottish Parliament (Bogdanor 2001, p. 291). In the context of community care for the elderly, NSIs feel a need to come to terms with the Westminster government's wish to see its English decision apply in Scotland. NSI optimism with devolution is dependent on the extent to which the Labour Executive is both prepared and permitted by Parliament to merely supervise the technical process of passing Scottish legislation. In the case of community care it was not allowed to stay within this zone of passive policy replication. NSIs anticipate further rounds of tension. The 'real test' may begin when different political parties are in power in Edinburgh and Westminster. At that stage further institution building is likely to become an NSI preoccupation. To date, however, the community care case has provided the best test of devolution as an elected representative based system of accountability, thus providing the material for vigorous discursive action on the effectiveness of the constitutional arrangements adopted.

The SNP have attempted to tear cleavages between the Labour Executive in Edinburgh and the Labour Government in Westminster, notably over free personal care for the elderly and legislation on tobacco use. NSIs are intrigued by the circumstances in which the Executive was called to heel in January over their unpopular decision to toe the Westminster line on free personal care. A reasonable conclusion is that the capacity for keeping 'Scottish business' tucked away in obscure Westminster committees has been removed (Bogdanor 2001, p. 117). The adversarial, executive-dominated 'negative template' offered by Westminster encouraged what Mitchell (1999) has described as an Europeanized approach to institution design in the context of Scottish devolution. Based on the community care experience, the potential for a 'Europeanized' discourse on the other hand is somewhat limited. For example, a degree of cross-party consensus was apparent during the course of the Health and Community Care Committee Inquiry, but it must also be noted that the Committee's findings were leaked to the press at a time calculated to extract political advantage and that the Inquiry ended with a row between Executive-supporting members and opposition members. It should not be forgotten that the SNP and Conservatives have

styled themselves as an opposition. Labour and the Liberal Democrats have conveniently played their respective parts in a familiar system.

HOME RULE COMMUNITARIANISM (HRC)

To some extent NSI has been counter-balanced by a second discursive thematic, with contributors seeking to treat devolution as an opportunity to reinvigorate the body politic through empowered deliberative democracy (Putnam 1993; Putnam 2000; Fung and Olin Wright 2001). The normative approach employed here is formed in opposition to what is conceived of as the 'monologic communication' bias of traditional approaches to public administration (Fox and Miller 1996, p. 51). Public servants are thought to use a form of language and communication which separates and excludes the speaker from individual intention and empathy. Problems are said to be 'pre-identified', 'solutions' already in place; 'authentic' dialogue between administrator and client cannot take place. Public servants are said to be in favour of a closed-off system of public administration where they never enter into positions where their judgement can be challenged.

The process of grass roots political involvement needs to be examined closely in the context of devolution, as does the extent to which new 'social capital' is being generated (Schuller *et al.* 2000; Hood 1998, p. 120). Tam's contrast of 'political shopping', where voters, behaving like consumers, try to secure 'a few more items for themselves', and communitarian processes where citizens learn about, review and determine how to reform decision-making processes, provides a source of inspiration for HRC observers of the devolution experience (Tam 1998, p. 17). The impact of devolution, viewed from a HRC discursive perspective, is measured by deepened political understanding, more active participation and citizenship.

In the context of devolution and elsewhere there has been an attempt to address the 'democratic deficit' thought to be caused by the perceived distance between government and the people by encouraging various means of involving the public directly in health care policy matters (Hunter 1995; Stewart *et al.* 1994; Klein and New 1998; Coast and Donovan 1996; Ling 1999; Hogg 1999). Evidence suggests that progress is mixed with low-key results to date (Audit Commission 1993; Balogh 1996; Beresford and Croft 1993; Blaxter 1995; Lindow and Morris 1995; Simpson 1996). A developing discourse is evident over the post-devolution boom in the formation of civic forums and the adoption of parliamentary mechanisms such as public petitions along with use of citizen's juries, surveys and locality based consultation. Given the problems in identifying the quality of participation achieved, this type of activity is being treated with some caution (Cavanagh *et al.* 2000).

HRCs are likely to be interested in devolution in the sense that MSPs are potentially geographically closer to communities than are MPs, in the sense that they represent smaller populations and may possibly live permanently in 'the community', unlike London-based MPs. (However, the list system

means the MSP-locality link is missing for a proportion of MSPs, partly undermining the argument.) Anecdotal evidence suggests the list system has caused MSPs to try harder at 'placing' themselves amidst community issues. Many MSPs are former councillors and may be attached to genuinely parochial politics. It is certainly true that the Health and Community Care Committee provided a forum for its membership to talk about services and individuals in their localities. Contributors to the HRC discourse may place significance on this.

It has been noticeable that the Deputy Minister for Community Care took every opportunity to promote the Executive's record on user involvement. Specifically, attention was drawn to the influence of people with learning difficulties and their carers on the establishment of a policy review and the claim made that 50 per cent plus levels of 'participation' were being achieved by mental health service users in the planning group set up in Aberdeen to implement the new Scottish Mental Health Framework. In the Deputy Minister's words, 'genuine and comprehensive consultation, outside the usual suspects and vested interests' was taking place (Scottish Parliament 2000a, col. 776).

If HRCs look for devolution to deliver new social capital in Scottish society then essentially evidence is required of what Fox and Miller (1996) describe as 'experiential referents' in the policy process. That is to say at least some of the 'players' in policy idea formation, agenda setting, decision taking and implementation are themselves directly involved in the issues at stake. This seems to strongly imply that community care for the elderly policy making should involve the elderly themselves.

Part of the HRC discourse is concerned with finding a medium through which people can participate in policy decisions. In the context of community care for the elderly, the Care Development Group's efforts to incorporate the subjects themselves in the policy analysis conducted for *Fair Care for Older People* were problematic. The inquiry used a telephone survey, which it is acknowledged omitted elderly people in institutional care because they were not telephone account holders. A somewhat unusual invitation was also made via an advertising campaign for interested parties to submit their views to the Care Development Group by means of a questionnaire. A total of 312 responses were received, of which a total of 21 came from elderly service users. The rest of the responses came from professionals and service provider organizations. The extent of the elderly population's participation in the focus groups and public meetings organized is not made clear (Scottish Executive 2001, p. 80). The report concludes that the material contributed by elderly people to the discourse is confused. Elderly people were unable to separate the 'what and how of services'. They were thought to be incapable of moving discussion 'beyond the personal and particular to the general and abstract' (Scottish Executive 2001 p. 85).

Devolution has provided a discursive opportunity for promoting involvement. In absolute terms, policy 'involvement' of the public has almost

certainly increased as a consequence of devolution regardless of the 'quality' of participation. Devolution-inspired involvement may be an identity-forming practice, though not in terms readily recognized from an HRC perspective.

AFFIRMATIVE STATE UTILITARIANISM

The third thematic evident is based on the language of state engineered welfare benefit and is referred to here as Affirmative State Utilitarianism (ASU). (The label alludes to the philosophy of 'greatest good for the greatest number' expounded by nineteenth-century social scientists such as the two Mills and Bentham.) This perspective attracts those who purport to engage in a discourse over material gains and it demands evidence of policy innovation. This rationalist 'means-ends' discourse tends to analyse devolution in ways recognizable to both new public management (Ferlie *et al.* 1996) and traditional social policy schools, but with an emphasis on the potential of Scotland, Wales and Northern Ireland for providing comparative policy laboratories and evidence for policy evaluation (Sanderson 2002). On one level this could mean quantitative comparisons – Scotland spends more; spends less; tends towards universalism; favours selectivity; becomes more private service provision dependent; less private dependent, and so on. On a different level, ASUs wish to explore, in the context of devolution, new public management conundrums such as the synthesis between citizen behaviour and managerialism (Cowan 1999).

Public attention was focused on the issue of free personal care with its association with income transfer and universal benefits. While this issue was a rich source for political posturing and scheming, attracting a good deal of media attention, it was only part of the ASU discursive field. ASUs were also concerned with the service delivery problems arising out of poor strategic planning capacities at central and local levels, problems which are thought to lower the levels of welfare achieved in community care. From an ASU position, frustration was expressed at the lack of Executive-level engagement with governance problems in community care during the course of evidence taking during the Health and Community Care Committee Inquiry. Pollitt (2000) has noted the poverty of data in the generalized acclamation of NPM. In the context of the policy case under examination, there was certainly an absence of baseline data for making before and after comparison. On the other hand, a stronger discourse could be said to have been evident over well-established accountability issues in health and community care than would have been the case in Scotland pre-devolution (Dawson and Dargie 2002, p. 45).

Devolution had promised an exciting opportunity to create Anglo-Scottish 'policy comparison laboratories'. While not quite matching the criteria needed to run a random controlled trial, the potential for Scotland to adopt different policies in areas such as community care is significant. The fear that the Scottish Executive would prefer 'tartanization' of Westminster

policy to the creation of genuinely Scottish policies informs much of the discourse over community care. Notwithstanding the different administrative starting point in Scotland, a complex form of convergence may be at work, with the terms 'replication' or 'emulation' better describing events than 'innovation' (Pollitt 2002). Where the Executive have been visibly innovative is in the commissioning of inquiries and in the adoption of the language of strategic change management. The Joint Futures Group on community care for example managed to be both an example of an inquiry and an expression of intent to employ 'futures'-based strategic thinking.

Part of the problem may lie in the sheer depth of the dependency relationships that exist between the Executive and substantive action. The Scottish Executive has supported regional initiatives, for example, the Perth and Kinross 'Invest to Save' programme in joined-up social services provision. 'Action' of the type described here needs a health board, a local authority and two NHS trusts and a local health care co-operative to collaborate. The Constitution Unit's optimistic view of the extent of progress with 'joined-up' health policy, derived from a review of health plans in England, Scotland and Northern Ireland, is not merited (Constitution Unit 2001, p. 12). A popular public discourse over the realities of joined-up government needs to be developed. Scottish and English policies on universal access to free at point of use personal care are now different and the significance of this departure is not lost on ASUs. ASUs, primarily concerned with universalism, may for this reason alone see devolution in a positive light, while NPM-orientated contributors will conclude that devolution has yet to deliver the type of calculable welfare benefits that they wish to analyse.

HOME RULE PLURALISM

The fourth thematic discourse is inclined towards concepts associated with interest group activity (Baumgartner and Leech 1998). This tendency, reasoning that the United Kingdom is an example of a country where interest group relationships with the Executive are more important than Parliament in relation to the policy process, is referred to here as Home Rule Pluralism (HRP). Britain is generally regarded as a country which employs the consultation process on a frequent basis. Health and community care is perhaps the area in which the process of finding working agreement on policy issues through consensus-forming work is most fully developed (Smith 1993, p. 10; Ham 1999, p. 114; Moran 1999). Richardson and Jordan's concept of 'policy communities', whose boundaries are sufficiently well established to denote 'insider' and 'outsider' status to interest groups, provides the type of demarcation that informs post-devolution HRP discourse (Richardson and Jordan 1987, p. 187). For example, the post-devolutionary form of government in Scotland may have resulted in a significant new point of access to the political process for policy community members such as the British Medical Association, the Royal College of Nursing, the Convention of Scottish Local Authorities and the Association of Directors of Social Work. According to

Paterson (2000), historical evidence exists to suggest greater strength and influence of the professions in Scotland. While this appears to be more an assertion than an empirically verifiable finding, it is indicative of the type of issue informing HRP discourse. Devolution has led to the creation of a new set of collaborative initiatives involving key policy community players. Evidence of emergent relationships involving new entrants to the policy community may also provide discursive material – as will measuring the extent to which devolution has raised or lowered the relative influence exercised by different members of the policy community (Harrison *et al.* 1990, p. 5).

In terms of generating interest group activity, the Health and Community Care Inquiry produced a total of 82 written submissions by organizations in comparison with the Royal Commission on Community Care total of 546. Crude population-adjusted empiricism would indicate that the Scottish Parliament is about as interesting to stakeholders as the Parliament at Westminster.

The devolution settlement is of sufficient consequence to have caused the policy community interest groups to have ‘upped’ their game in Scotland. The long drawn-out response to Sutherland and the ongoing Parliamentary Inquiry meant that lobby groups had a good opportunity to embed their Scottish campaigning machines and to develop their own style of discursive action. A good example of this would be Alzheimer Scotland, who have succeeded in moving their operation firmly into a post-devolution mode, which allows them to focus on Scottish differences in policy, particularly where there are perceived failings. Their report, ‘Planning Signposts for Dementia Care Services’ (Alzheimer Scotland 2000), was both timely and well publicized, demonstrating a capacity to keep an issue in the public eye.

While the community care policy insiders serving on the Care Development Group already enjoyed tenancy in channels of influence convened by the Scottish Office pre-devolution, their proximity to power has changed in the sense that access to senior politicians with hands on the legislative machinery of government can never have been easier. The Care Development Group and the Scottish Parliament Health and Community Care Committee are obvious examples of the additional points of access available to the policy community.

Home Rule Pluralists will also discuss the circumstances in which the policy community becomes more or less permeable to non-insiders. One group, for example, which has only recently emerged as a serious player is Scottish Care which organizes the private nursing/residential home interest. Membership coverage varies across the country, but in Grampian, where Scottish Care represents 19 of the city council area’s 23 private homes, there has been sufficient strength to deliver an ‘ultimatum’ to the local council, to the effect that in the absence of an offer to increase payments, members will refuse to admit any more council-funded residents (*Press and Journal* 2001d). That the First Minister felt it necessary to intervene and plead for more discussions

between Scottish Care, COSLA (Convention of Scottish Local Authorities) and local authorities, is indicative of the success of the protest (*Press and Journal* 2001e).

At a different level, HRP's will examine the spoils of pluralist interest group activity in terms of allocations going to spending areas such as health and education. It seems inevitable that divergence with England will increase and the extent to which this is a consequence of pluralist-style activity is likely to emerge as a key theme. Clearly, from a HRP perspective, the discursive activity taking place adds up to something substantial.

CONCLUSION

The community care for the elderly case has allowed comparisons to be made between the development of four different narrative thematics. On the basis of the case-based model, discursive patterns may be said to be emerging which are identity forming. It could be concluded that devolution shows encouraging signs of life on the basis of discursive action raised in the thematics NSI, HRP and to some extent ASU. This might satisfy Tendency (a) (see p. 261, above), since the discursive action in evidence produces an identity of sorts with impacts also there to be recorded. However, in terms of the tests applied by Tendency (b), the overview of discursive action, particularly that associated with an HRC perspective, fails to suggest the sort of radical identity and impact-building demanded by devolution enthusiasts.

Establishing identity and impact will remain problematic until a single narrative gains ascendancy in the business of perceiving what devolution is and what devolution does. For the time being, in summing up where devolution has got to, it is tempting to follow the view of Tom Nairn (2000 p. 161). Nairn appears to have anticipated the devolution experience as a sort of administrative 'groundhog day' phenomena, acted out in what he describes as the 'seamless switch-over from draughts to chess'. This would be accomplished by a cadre of continuity minded 'Mr Fixits' drawn from the ranks of Scotland's administrative elite. As an exercise in public administration the key task here is to develop different rules and different moves which produce the same results and replicate the same sets of administrative motives. Successfully accomplished, this justifies a state of no-change and provides the inspiration to design the inevitable next round of no-change. The flurry of activity referred to in the discourse thematics NSI and HRP could therefore be treated as evidence of the successful maintenance of the *status quo*. In this interpretation, identity and impact are thought to be confined to the act of administrative replication. Less cynically, the different steps to be learnt in the choreography of the new government of Scotland may themselves be treated as a challenge of some considerable significance, regardless of any achievement of the substantive impact and identity formation sought by participants in HRC and ASU discourses.

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